Office - Supreme Court
FILED
AUG 17 1953
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 267

PAUL J. GLENN and HARVEY C. SUMMERS,
Petitioners,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

LORING B. MOORE,
123 West Madison Street,
Chicago 2, Illinois,
WILLIAM R. MING, JR.,
123 West Madison Street,
Chicago 2, Illinois,
GEORGE N. LEIGHTON,
123 West Madison Street,
Chicago 2, Illinois,
Attorneys for Petitioners.

The Scheffer Press, Inc.—ANdover 3-6350

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statutes and Rules	3
Statement	4
Specification of Errors to Be Urged	9
Reasons for Granting the Writ	9
Conclusion	11

CITATIONS

Chambers v. Florida, 309 U. S. 227	10
Frank v. Mangum, 237 U. S. 309	10
Mooney v. Holohan, 294 U. S. 113	9

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statutes and Rules	3
Statement	4
Specification of Errors to Be Urged	9
Reasons for Granting the Writ	9
Conclusion	12

CITATIONS

Chambers v. Florida, 309 U. S. 227	10
Frank v. Mangum, 237 U. S. 309	10
Mooney v. Holohan, 294 U. S. 113	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No.

PAUL J. GLENN AND HARVEY C. SUMMERS,
Petitioners,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Paul J. Glenn and Harvey C. Summers, Petitioners, pray that a writ of certiorari issue to review the decision and judgment of the Supreme Court of Illinois entered in the above cause on March 23, 1953, affirming the judgment of the trial court that was entered July 27, 1951. Petition for rehearing was denied May 18, 1953.

OPINIONS BELOW.

The judgment of the trial court (Rec. 3-Abst. 467) is unreported. The opinion of the Supreme Court of Illinois is reported in 415 Ill. 47, 112 N. E. (2d) 133.

The judgment of the Supreme Court of Illinois was

entered on March 23, 1953 (R. 18). Petition for rehearing was denied May 18, 1953 (R. 21).

JURISDICTION

The jurisdiction of this court is invoked under 28 U. S. C. Sec. 1257 (3).

Jurisdiction is invoked to review under the due process clause of the 14th Amendment to the Constitution of the United States, the federal question raised and preserved by the action of the trial court in extending by continuances the trial of petitioners over a period of three (3) months (Rec. 3-Abst. 467) thus allowing the prosecution to obtain and introduce into evidence, without notice to petitioners, proof of transactions that occurred during the trial period, all of which tended to prejudice petitioners and deny petitioners a fair trial within the intendment of said due process clause of the 14th Amendment to the Constitution of the United States.

By Points relied upon for Reversal, as required by Illinois law, petitioners presented to the Supreme Court of Illinois 12 points relied upon, including the federal question preserved in the trial court record. In its opinion (Rec. 6) the Supreme Court of Illinois recognized that one of the issues preserved was the question involving the effect upon the rights of petitioners of "• • • the length of time over which the trial extended • • •" (Rec. 6). The Supreme Court of Illinois on March 23, 1953 entered an order that "• • • the judgment of the Criminal Court of Cook County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error • • •" (Rec. 18).

QUESTION PRESENTED.

Whether the action of the trial court, affirmed by the Supreme Court of Illinois, extending the trial of petitioners over a period of three (3) months denied to petitioners a fair trial within the intendment of the due process clause of the 14th Amendment to the Constitution of the United States.

Whether the action of the trial court, affirmed by the Supreme Court of Illinois, in allowing the prosecution to introduce into evidence, without prior notice to petitioners, proof of transactions that occurred during the trial period; which proof was admitted as evidence of the guilt of petitioners of the crime charged in the indictment.

Whether the conduct of petitioners as shown in the trial court record was such as to relieve the trial court of the duty to see that petitioners in the state court were accorded a fair trial within the intendment of the due process clause of the 14th Amendment to the Constitution of the United States.

STATUTES AND RULES INVOLVED.

This application does not involve the constitutional construction of any statute or rule of court.

STATEMENT.

Petitioners were indicted by the Grand Jury of Cook County, Illinois and charged with violation of the Confidence Game statute, Ch. 38, Sec. 256, Ill. Rev. Stat. (1951). The trial court record shows that on September 26, 1946, the Secretary of State of Illinois issued a corporate charter to the First Apartment Corporation (R. 3; Abst. 44). Its purposes were to "* * * buy, sell, own, use, operate, manage and lease for its corporate purposes, dwellings, apartment houses, residences, hotels and business property * * *" (R. 3-Abt. 44, Peo. Ex. 38). The defendant Harvey C. Summers was active with the corporation as a shareholder and as its president since its organization (R. 3-Abst. 426). In the summer of 1947, the defendant Paul J. Glenn, "joined the corporation", investing the sum of $1,000.00 he had acquired from his life's savings (R. 3-Abst. 367).

In doing business the defendants in the name of the corporation advertised apartments for rent (Abst. 2). The defendants obtained the apartments by purchasing the buildings in the name of nominees because the sellers of these buildings preferred to deal with individuals rather than with the 1st Apartment Corporation (Abst. 429). The defendant obtained funds with which to acquire interests in buildings from loans made to the corporation (Abst. 3) by persons who wished to obtain apartments (Abst. 320). At the time of the crime charged in the indictment, the defendants had control of, and possessed the right to rent apartments in buildings in the City of Chicago, Illinois at 4105 Drexel Boulevard, 812-822 East 46th Street, 816-826 East 49th Street, 5529 Cottage

Grove Avenue, 6625-6629 Drexel Boulevard, 6957-6959 Wabash Avenue (Abst. 368-369). These interests were deeds to trustees, contracts to purchase or in the form of options to purchase or options to re-purchase coupled with the right to rent apartments therein (Abst. 369). After October 9, 1950, and up to the time of the trial, the defendants had the right to send prospective tenants to the Realty Company managing the properties at 6625 South Drexel Boulevard at 6957 South Wabash Avenue (Abst. 235-37).

In doing business, the defendants, through the corporation, obtained apartments for prospective tenants whom the defendants called "investors" (Abst. 370). The transactions with each prospective tenant required the payment in advance of sums ranging from $300.00 to $1,000 (R. 3-Abst. 3, Peo. Ex. 3), which payment was designated a deposit which by agreement (R. 3-Abst. 3), the defendants could hold and use for a period of ninety days, "more or less", * * * provided for the purpose of obtaining and delivering to the tenant a dwelling unit as may be satisfactory to the tenant (R. 3-Abst. 3). The agreement provided that the defendant had a right to use the money thus deposited to obtain the apartment and upon obtaining the apartment, it was agreed that (R. 3-Abst. 3), the first two months rent would be deducted from the amount deposited. The sum deposited was evidenced by a Corporate Note (R. 3-Abst. 4, Peo. Ex. 4) containing a judgment clause (R. 3-Abst. 12). From 1948 to 1950, the corporations did a gross business of $135,000.00 with 479 persons, 65% of this amount was turned over and repaid according to the corporate undertaking (R. 3-Abst. 439, Def. Ex. 25).

Sometime in March, 1950, through a real estate broker (R. 3-Abst. 380-380), the defendant Glenn began negotiations for the purchase of a building at 947 Hyde Park Boulevard, Chicago, Illinois (R. 3-Abst. 40). Defendant spoke about getting 42 people putting up $1000.00 each to buy the building (R. 3-Abst. 41). The defendant had a conversation with a broker who during June or July, 1950, told him to stop these negotiations and wait because the sellers could be forced to reduce the price (R. 3-Abst. 266). The original negotiations did not materialize (R. 3-Abst. 381). In April, the defendant paid $300.00 to have apartments kept vacant and obtained a set of keys (R. 3-Abst. 381-383). On June 27, 1950 the defendants gave the owners a check for $1000.00 to show his sincerity in the transaction (R. 3-Abst. 40, 42). The building was not purchased and in September the keys to the apartments in the building were returned (R. 3-Abst. 41).

During the month of June, 1950, the complaining witness, Lonnie Dotson saw an ad in a Chicago newspaper describing one of the apartments being offered for rent by the First Apartments Corporation (R. 3-Abst. 1-2). In response to his request an application was sent to him (R. 3-Abst. 2). He and his wife sent in the form, and he was asked to come to the office (R. 3-Abst. 2). The defendant Glenn talked with him (R. 3-Abst. 2). He saw defendants' offices and heard other persons speak of having obtained apartments (R. 3-Abst. 12, 17). Later that day, ht was shown an apartment in the building at 947 Hyde Park Boulevard (Abst. 3). The following Saturday he deposited $400.00 with the defendant (Abst. 3). Later he paid an additional $100.00 (Abst. 4). To evidence the amount deposited, he received a corporate note and a contract (Abst. 3-4). The complaining witness did not obtain

an apartment from the defendants, nor was he refunded the money deposited (Abst. 9). After a complaint to the State's Attorney for Cook County, the indictment involved in this case followed.

After putting into evidence the testimony of the complaining witness and his wife, Mottie Dotson, the People introduced the testimony of 15 other persons who on various dates had entered into transactions to obtain apartments from the defendants. Of these fifteen, two of them, Dolores Marvin (Abst. 95) and Theodore Robinson (Abst. 148) obtained apartments in accordance with the agreements they had with the defendants (Abst. 97, 152). Of the other thirteen, four of these did not make the initial payment of money to the defendants: Bush Allen (Abst. 144); Frank Caldwell, (Abst. 141); Willie Cox (Abst. 90) and Octavia Dukes, (Abst. 133). The other nine paid monies directly to the defendants to obtain apartments (Abst. 51, 65, 45, 51, 121, 185, 100, 73, 105). The defendants maintained offices at 6455 Cottage Grove Avenue, Chicago, Illinois and continuously maintained a staff through which they dealt with the persons who entered into agreements with them (Abst. 21). They could be reached by telephone at any time (Abst. 33).

Throughout the time the defendants did business, they had the advice and services of attorneys who advised them and assisted them in the preparation of forms and documents (Abst. 345, 323, 335). Up to the time of the trial, the defendants had option agreements and rental rights in several apartment buildings in which they were attempting to put tenants with whom they had agreements (Abst. 368-369). They enjoyed sound business

reputation (Abst. 253, 378, 250, 244, 255, 370) until the investigations prior to the indictment in this case (Abst. 376).

On their behalf the defendants introduced the testimony of six satisfied persons with whom they had entered into transactions similar to those proved by the People to sustain the allegations in the indictment (Abst. 250, 253, 378, 244, 255, 370). Five prominent persons testified that the defendants were personally known by them and that defendants' reputations for honesty and integrity were good (Abst. 388, 364, 400, 424, 398). Four lawyers in good standing testified on behalf of the defendants (Abst. 230, 323, 345, 335). Two business associates of defendants gave testimony for them and described their business relations with the defendants (Abst. 350, 202).

Both defendants testified at their trial and denied any intention to obtain monies of the complaining witness by means of "confidence game" (Abst. 388, 438). Three months after the trial began, the petitioners were sentenced (R. 3-Abst. 1, 467). During the three-months trial, and after a comment by the trial judge that the prosecution had not proved the crime charged, evidence was introduced of an alleged transaction that petitioners had become engaged in during the trial (R. 3-Abst. 90-95). It appears from the record that the court allowed the prosecution continuances, over the argument of counsel for petitioners, in order that additional evidence may be obtained and introduced during these continuances (R. 3-Abst. 201). Petitioners' motion for a finding in their favor at the conclusion of the state's case, was overruled (R. 3-Abst. 201).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Illinois erred:

1. In holding that the trial court properly admitted in evidence proof of transactions that occurred during the trial of petitioners.

2. In affirming the judgment of the trial court over the claim of the petitioners that the length of time over which the trial of petitioners extended amounted to a denial to petitioners of a fair trial within the meaning of the due process clause of the 14th Amendment to the Constitution of the United States.

3. In affirming the judgment of the trial court when the record showed that the trial judge extended by continuances the trial of petitioners and allowed the prosecution opportunity to obtain proof of transactions that occurred during petitioners' trial, thereby denying to petitioners a fair trial within the meaning of the due process clause to the 14th Amendment to the Constitution of the United States.

4. In affirming the judgment of the trial court over the claims of petitioners that the trial court proceedings denied them a fair trial within the meaning of the due process clause of the 14th Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

1. "* * * * upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution of the United States." *Mooney* v. *Holohan*, 294 U.S. 103 at Page 113.

"* * * the due process provision of the 14th Amendment —just as that in the 5th—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect, at all times, people charged with or suspected of crime by those holding position of power and authority * * *" 309 U. S. 227 at page 236.

In view of the pronouncements of this Court, we respectfully submit that the record in the case at bar presents the federal question raised and preserved whether the trial of petitioners extended over a three-month period with continuances (R. 3-Abst. 201) to allow the prosecution an opportunity to obtain additional evidence of guilt, denied to the petitioners a fair trial within the meaning of the 14th Amendment to the Constitution of the United States.

2. In *U. S.* v. *Pink, etc., et al.*, 315 U.S. 203 at page 217, it was said "* * * this court will review and independently determine all questions on which a federal right is necessarily dependent * * *" In *Frank* v. *Mangum* 237 U.S. 309, this Court indicated that the inquiry into the enjoyment of due process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure; and the inquiry to determine jurisdiction extends to the entire scope of state court proceedings. Therefore, we submit that in the instant case Writ of Certiorari should be granted to allow review of the federal claims submitted.

3. The question to be reviewed by certiorari herein deals with a substantive application of the doctrine that petitioners in the state trial court were entitled to a fair and prompt trial in which they were to be confronted with evidence presented in accordance with the established rules of procedure applicable alike to their case and to those of other persons similarly situated. The trial court record,

however, shows that exactly three months after the trial began defendants were sentenced for a comparatively simple crime. The trial court record shows (R. 3-Abst. 201) that after the trial judge had indicated there was not sufficient evidence to convict the petitioners, a continuance was given the prosecution so that more evidence could be obtained. Without notice to petitioners, a witness was brought in (R. 3-Abst. 90). This witness had come to the office of petitioners during the trial (R. 3-Abst. 91). The trial court proceedings were extended and continuances were granted the prosecution as a means of producing evidence sufficient to obtain the conviction of the petitioners. The "procedural standards" guaranteed by the due process provision of the 14th Amendment were thus denied to petitioners by the state trial court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LORING B. MOORE,
123 West Madison Street,
Chicago 2, Illinois,

WILLIAM R. MING, JR.,
123 West Madison Street,
Chicago 2, Illinois,

GEORGE N. LEIGHTON,
123 West Madison Street,
Chicago 2, Illinois,

Attorneys for Petitioners.